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LAKHA PROPERTIES SAN DIEGO, LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BARBARA HUBBARD, Plaintiff, v. HOMETOWN BUFFET, INC. dba HOMETOWN BUFFET #0703; LAKHA PROPERTIES – SAN DIEGO, LLC, Defendants.	Case No. 07CV 2303 DMS RBB Judge: Hon. Dana M. Sabraw LAKHA PROPERTIES SAN DIEGO, LLC'S ANSWER TO COMPLAINT Complaint Filed: December 7, 2007 Trial Date: Not Set

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Defendant Lakha Properties San Diego, LLC answers the Complaint filed by Plaintiff herein as follows:

SUMMARY

1. Answering Paragraph 1, Defendant admits the location of Hometown Buffet and that this action involves that subject property. Except as expressly admitted, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

2. Answering Paragraph 2, Defendant admits the location of Hometown Buffet and that this action involves that subject property. Except as expressly admitted, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

JURISDICTION

3. Answering Paragraph 3, Defendant denies each and every allegation contained therein, except Defendant admits that if Plaintiff's Complaint stated a claim against Defendant, jurisdiction would be proper in this Court.

4. Answering Paragraph 4, Defendant denies each and every allegation contained therein, except Defendant admits that if Plaintiff's Complaint stated a claim against Defendant, jurisdiction would be proper in this Court.

5. Answering Paragraph 5, Defendant denies each and every allegation contained therein, except Defendant admits that if Plaintiff's Complaint stated a claim against Defendant, jurisdiction would be proper in this Court.

VENUE

6. Answering Paragraph 6, Defendant denies each and every allegation contained therein, except Defendant admits that if Plaintiff's Complaint stated a claim against Defendant, venue would be proper in this Court.

PARTIES

7. Answering Paragraph 7, Defendant admits that this action involves a Hometown Buffet Restaurant located at 5881 University Ave, San Diego, CA 92115 (the "Restaurant"). Defendant specifically denies that it owns, operates or manages the Restaurant. Defendant admits that it is the lessor of the property on which the Restaurant is located. Except as expressly admitted or denied, Defendant lacks sufficient information and belief to enable it to answer, and basing its denial thereon, denies generally and specifically each and every allegation contained therein.

8. Answering Paragraph 8, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

FACTS

9. Answering Paragraph 9, Defendant admits that the Restaurant is a public accommodation or facility serving food and drinks. Except as expressly admitted, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

10. Answering Paragraph 10, Defendant denies that any barriers exist which would interfere with or prevent the use and enjoyment of the goods, services or facilities which it offers. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

11. Answering Paragraph 11, Defendant denies that any barriers exist which would interfere with or prevent the use and enjoyment of the goods, services or facilities which it offers. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the

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extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

12. Answering Paragraph 12, Defendant denies that any barriers exist which would interfere with or prevent the use and enjoyment of the goods, services or facilities which it offers. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

13. Answering Paragraph 13, Defendant denies that it knew of any inaccessible elements and areas which would deny access to the physically disabled or that its facilities violated state and federal law, and thereby also denies that it refused to remove any barriers. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

14. Answering Paragraph 14, Defendant denies that it knew of any inaccessible elements and areas which would deny access to the physically disabled or that its facilities violated state and federal law, and thereby also denies that it intentionally failed to alter its property to comply with accessibility standards. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

15. Answering Paragraph 15, Defendant denies that it knew of any inaccessible elements and areas which would deny access to the physically disabled or that its facilities violated state and federal law, and thereby also denies that it intentionally failed to comply with buildings standards, building plans and permits, or applicable accessibility standards. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or

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this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

(Violation of the Americans with Disabilities Act of 1990)

16. Answering Paragraph 16, Defendant realleges and incorporates by reference herein, as if set forth in full, its answers set forth in Paragraphs 1 through 15, above.

17. Answering Paragraph 17, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

18. Answering Paragraph 18, Defendant denies that it has violated the Americans with Disabilities Act ("ADA") or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

19. Answering Paragraph 19, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

20. Answering Paragraph 20, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

21. Answering Paragraph 21, Defendant denies that it has violated the ADA or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

22. Answering Paragraph 22, Defendant denies that it has violated the ADA or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

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23. Answering Paragraph 23, Defendant admits the Restaurant was constructed after 1992. Except as admitted, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

24. Answering Paragraph 24, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

25. Answering Paragraph 25, Defendant denies that it has violated the ADA or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

26. Answering Paragraph 26, Defendant denies that it knew of any inaccessible elements and areas which would deny access to the physically disabled or that its facilities violated state and federal law. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

27. Answering Paragraph 27, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

28. Answering Paragraph 28, Defendant denies that it altered its facilities in a manner that violated the ADA or any other applicable law. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

29. Answering Paragraph 29, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

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30. Answering Paragraph 30, Defendant denies that it failed to make reasonable modifications in policies, practices or procedures where necessary to afford access to facilities. Except as expressly denied, Defendant lacks sufficient information and belief to enable it to answer and/or this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

31. Answering Paragraph 31, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

32. Answering Paragraph 32, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

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SECOND CLAIM FOR RELIEF

(Disabled Persons Act)

33. Answering Paragraph 33, Defendant realleges and incorporates by reference herein, as if set forth in full, its answers set forth in Paragraphs 1 through 32, above.

34. Answering Paragraph 34, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

35. Answering Paragraph 35, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

36. Answering Paragraph 36, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

37. Answering Paragraph 37, Defendant denies generally and specifically each and every allegation contained therein.

38. Answering Paragraph 38, Defendant denies that it has violated the Disabled Persons Act or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

39. Answering Paragraph 39, Defendant denies that it has violated the Disabled Persons Act or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

THIRD CLAIM FOR RELIEF

(Unruh Civil Rights Act)

40. Answering Paragraph 40, Defendant realleges and incorporates by reference herein, as if set forth in full, its answers set forth in Paragraphs 1 through 39, above.

41. Answering Paragraph 41, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

42. Answering Paragraph 42, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

43. Answering Paragraph 43, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

44. Answering Paragraph 44, Defendant denies generally and specifically each and every allegation contained therein.

45. Answering Paragraph 45, Defendant denies generally and specifically each and every allegation contained therein.

46. Answering Paragraph 46, Defendant denies that it has violated the Unruh Act or any other law. Except as expressly denied, this paragraph calls for legal conclusions which

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require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

47. Answering Paragraph 47, Defendant denies that it has violated the Unruh Act, the ADA or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

FOURTH CLAIMFOR RELIEF: DAMAGES FOR DENIAL OF FULL AND EQUAL ACCESS TO A PUBLIC

(Unruh Civil Rights Act)

48. Answering Paragraph 48, Defendant realleges and incorporates by reference herein, as if set forth in full, its answers set forth in Paragraphs 1 through 47, above.

49. Answering Paragraph 49, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

50. Answering Paragraph 50, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

51. Answering Paragraph 51, Defendant admits the Restaurant was constructed after 1970. Except as expressly admitted, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

52. Answering Paragraph 52, Defendant denies that it has violated Health and Safety Code §§ 19955, 19959 or Government Code § 4450, or any other law. Except as expressly denied, this paragraph calls for legal conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein.

53. Answering the Prayer for Relief, Defendant denies that it has violated any laws or that Plaintiff is entitled to any relief. Except as expressly denied, this paragraph calls for legal

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conclusions which require no answer, and to the extent an answer is required, Defendant denies generally and specifically each and every allegation contained therein

AFFIRMATIVE DEFENSES TO EACH AND EVERY CLAIM

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state facts sufficient to constitute a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which injunctive relief can be granted.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to set forth a case or controversy as required by Federal law.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert the claims therein as required by Federal law.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert the complaint and each purported claim for relief alleged therein, as to any alleged disability access violation not actually encountered by him because Plaintiff cannot show injury in fact as to such alleged violations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert a separate claim against Defendant pursuant to California Health and Safety Code Section 19955(a).

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitation.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by Plaintiff's failure to exhaust required administrative remedies.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred by the doctrine of laches.

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TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred by the doctrine of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred by the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because Defendant fully performed all contractual, statutory, and other duties owed to Plaintiff under applicable law.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because, to the extent that Plaintiff alleges Defendant has obligations under State or Federal law to remove barriers at the Restaurant, the alleged obligations exceed the scope of the legislated authority.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because local building authorities issued appropriate permits and Certificates of Occupancy for the Restaurant, and Defendant had a right to rely on the issuance of the permits as establishing compliance with all applicable laws, regulations, orders and approvals.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because appropriate accessibility changes have been made and continue to be made at the Restaurant to the extent such changes are readily achievable. To the extent that any changes have not been made that Plaintiff contends should have been made, those changes are not required under applicable law and are not readily achievable.

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SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because, to the extent that alterations have not been made to the Restaurant that Plaintiff contends should have been made, those changes were not required under applicable law, and any requirement to make those changes would impose an undue burden.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff has demanded modifications to the Restaurant that are either not readily achievable, technically infeasible, not required, would create an undue hardship on Defendant, would fundamentally alter the way Defendant provides its goods and services, or would create a risk to the health and safety of Plaintiff and others.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because Defendant acted reasonably, honestly, in good faith, and without the intent to discriminate at all material times based on all relevant facts and circumstances known by it at the time it acted.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining relief under California Civil Code sections 51, et seq. because nothing therein may be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, to any existing establishment, facility, building, improvement, or any other structure.

TWENTIETH AFFIRMATIVE DEFENSE

The claim for relief alleged in Plaintiff's Complaint under California Civil Code sections 51, et seq. is barred because Defendant's conduct is applicable alike to all persons.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because Plaintiff is not a member of the class of individuals that the Americans with Disabilities Act or California's disability access statutes are designed to protect.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant alleges that the cost of some or all of the modifications to the Restaurant that Plaintiff seeks in this action is disproportionate in terms of both cost and scope to that of any alterations made within the statutory period, if any.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because Plaintiff has the same access to the Restaurant as non-disabled persons.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant alleges that the goods and services as provided at the Restaurant to the public, including Plaintiff, are accessible to and usable by persons with disabilities as required under federal and state law, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, et seq., the Unruh Act, California Civil Code sections 51, et seq., the Blind and Other Physically Disabled Persons Act, California Civil Code sections 54, et seq., Health and Safety Code Part 5.5, and all other disability access statutes, rules and regulations.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because the Restaurant was maintained in a safe condition at all times, with all possible dangerous conditions eliminated, and Defendant had no knowledge of any dangerous conditions.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant has complied with all Federal and State statutes and regulations referenced in the Complaint and has not violated any legal provisions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to allege with specificity any acts or omissions by Defendant which proximately caused or would cause damages, if any, to Plaintiff.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to properly mitigate the damages Plaintiff seeks, and is thereby precluded from recovering those damages, which could have reasonably been avoided by the exercise of due care.

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TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff voluntarily, with full knowledge of the matters referred to in the Complaint, assumed any and all risks, hazards and perils of the circumstances referred to in Plaintiff's Complaint and therefore assumed the risk of any injuries or damages sustained by Plaintiff, if any at all.

THIRTIETH AFFIRMATIVE DEFENSE

The incident(s), if any, alleged by Plaintiff was caused by the negligence and/or fault of other persons, corporations or entities and non-parties to this action, and as such Defendant's liability, if any, should be reduced accordingly.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's injuries or damages, if any, were contributed to and/or proximately caused by the negligence of the Plaintiff, in that Plaintiff failed to exercise ordinary care for his own safety under the circumstances, thereby barring Plaintiff from any recovery.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to allege with specificity any acts or omissions by Defendant which proximately caused or which would cause damages, if any, to Plaintiff.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Defendant presently has insufficient knowledge or insufficient information upon which to form a belief as to whether it may have additional, yet unasserted, affirmative defenses. Defendant therefore reserves the right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by way of this action;
2. That the Complaint and action be dismissed with prejudice;
3. That Defendant have judgment against Plaintiff;
4. That Defendant recover its costs of suit herein incurred, including reasonable attorneys' fees; and

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5. For such other and further relief as the Court deems just and proper.

Dated: January 7, 2008

Respectfully submitted,
BEST BEST & KRIEGER LLP

By: /s/ Alison D. Alpert
ALISON D. ALPERT
Attorneys for Defendant
LAKHA PROPERTIES SAN DIEGO, LLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the court's CM-ECF system per Federal Rule of Civil Procedure 5(b)(2)(D). Any other counsel of records will be served by facsimile transmission and/or first class mail this 7th day of January, 2008.

/s/ Alison D. Alpert